

December 1, 2006

Via email: hgregczmiel@ceq.eop.gov

Mr. Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality (CEQ)
722 Jackson Place, NW
Washington, DC 20503

RE: Proposed Guidance on Categorical Exclusions (NEPA)
Federal Register Vol. 71, No. 181, September 19, 2006

Dear Mr. Greczmiel:

ConocoPhillips appreciates the opportunity to provide comments on the proposed CEQ Guidance on Categorical Exclusions (CX). ConocoPhillips is an international, integrated energy company with extensive expertise in exploration and production and the refining, marketing and transportation of petroleum products. ConocoPhillips explores, develops and produces energy on Public Lands throughout the United States. Because of our business involvement in these areas and our experience with agencies that administer CXs, we strongly support improvements in the CX process under NEPA.

ConocoPhillips, as members of the American Petroleum Institute (API) and Public Lands Advocacy (PLA) has assisted with a team of other industry members to review the Proposed Guidance and prepare comments to assist with your final Guidance. We endorse those comprehensive comments submitted by these industry trade associations and offer the following recommendations:

Energy Policy Act: ConocoPhillips supports the efforts the CEQ has put forth in this proposal to assist Federal agencies in improving and modernizing the use of CXs under NEPA. However, there has been some confusion as to whether this proposal would supersede the statutory CXs contained in Title III, Section 390 of the Energy Policy Act of 2005. We recommend that the CEQ clarify this disparity in its issuance of the final Guidance.

Documentation: The Proposed Guidance in its intent to “allow agencies flexibility in implementing the procedures for CXs that are adapted to the requirements of other applicable laws” appears to set out more complex procedures for making CX determinations and thus directs the agencies to prepare seemingly redundant documentation. We recommend that CEQ simplify the Guidance by incorporating a “user-friendly” checklist for all CXs that would be included in the administrative record. Such check-list would consist of having the agencies:

- Outline the purpose of the CX and the specific action that would be included;

- Cite those extraordinary actions that would curtail the use of the CX;
- Cite examples of existing analyses that support the use of a CX or cite agency field office experience or other scientific information that supports the use of a CX;
- Specify what types of federal monitoring actions that would be used to validate the success in the utilization of the CX or alternatively demonstrate that the CX is not appropriate;
- Include a section that justifies/describes the decision to create a new CX

A summary of this information should be included in the Federal Register for public review and comment as well as provided to the CEQ for its review.

Public Involvement: The public involvement should consist of commenting on a proposed CX prior to the CX running through the formal review process and not after the CX is applied to an action. The agency will have already identified “extraordinary circumstances” when determining whether the use of a CX is appropriate so additional public involvement is unnecessary and defeats the purpose of the CX.

CX Review: ConocoPhillips supports periodic review of existing CXs to ensure appropriate use. Such monitoring benefits the agency, the applicant and the public and is essential in good land management and resource protection. The monitoring, however should be performed by knowledgeable entities and provide scientific evidence that supports their findings.

Again, thank you for the opportunity to provide our comments on the proposed Guidance on Categorical Exclusions. Please feel free to contact me at (432) 688-9042 should you have questions or would like to discuss our comments.

Sincerely,

Eileen Danni Dey
Regulatory Manager
Mid-Continent Business Unit
ConocoPhillips